

REMARKS

Claims 1,3 and 5-16 are all the claims pending in the application.

Claim Objections and Rejections under 35 U.S.C. § 112

Claims 1, 3, and 5-12 stand rejected under 35 U.S.C. 112, first paragraph, and claims 5 and 6 were objected to for minor informalities. Applicants have amended the claims in a manner thought to resolve these rejections and objection.

Rejections under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a)

Applicants respectfully note that the Examiner generally provides the same rejections as provided in the February 19, 2004 Office Action. New to this Office Action, the Examiner provides comments on Applicants' May 19, 2004 Amendment.

In the May 19, 2004 Amendment, the claims were amended to further recite "inserting an identified field, which corresponds to the identification information, in a bit stream reconfiguration layer." In an exemplary embodiment, when this bit stream is received by a component of the radio transmission "system" an advantageous channel for transmission can be decided upon based on the required bit rate relating to the quality of video (to include the QoS parameter and the type of video application as deciding factors for this decision). As such, the protocol including a bit stream reconfiguration layer facilitates adaptation for insertion of parameters of the video, allowing a more efficient transmission over wide band radio.

In the Examiner's comments on page 4 of the Office Action, the Examiner argues that "as stated in the previous office action, Mikkonen et al. disclose the limitation of inserting an identifier field in the bit stream." The Examiner states that although there is no language disclosing this insertion being done in a "bit stream reconfiguration layer", the action of inserting the flow identifier is a means of reconfiguring the bit stream and thus, anticipates the insertion being performed at a "bit stream reconfiguration layer" according to the broad claim language." On page 6 of the Office Action, the Examiner states that the step (d) of inserting an identifier field is disclosed in the flow identifier transmitted in message 603 of Figure 6 and described from col. 10, line 60 through col. 11, line 5.

Applicants respectfully traverse these reasons for rejection. First, the Examiner's remark that the insertion of a flow label into a bit stream is *inherently* performed in a "bit stream reconfiguration layer" is not disclosed or suggested by Mikkonen et al. "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

As noted above, the transmission method of the present invention includes four, separate layers, unique from the prior art three layer transmission protocol. As argued in Applicants' May 19, 2004 Amendment, Mikkonen et al. does not specifically describe any layers, and actually teaches away from the suggestion of such a non-conventional protocol that would include a bit stream reconfiguration layer. That is, Mikkonen et al. disclose that all data transmissions are based on packets that are routed according to *Internet protocol* (see column 10,

lines 43-44). Further, the formation of packets is disclosed as "prior art" (see col. 10, lines 35-40). As such, these conventional methods are not suggestive of the "four-layer" protocol of the present invention. Therefore, since the layers of the Mikkonen et al. transmission method are not disclosed, and a fourth, separate layer is not disclosed or suggested, Applicants respectfully submit that the Examiner has not met his burden of providing anticipation of this feature recited in the independent claims, particularly by inherency.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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